

REMARKS

Applicant respectfully requests reconsideration of the final rejection of September 24 2009 in which claims 1-5 and 38-54 were rejected.

\*\*\*

The applicant would like to request removing the finality of the rejection, because of a direct violation of the MPEP rules.

First, MPEP Section 707.07(g) states that piecemeal examination should be avoided as much as possible stating that "The examiner ordinarily should reject each claim on all grounds available, avoiding, however, undue multiplication of references." Claim amendments introduced in the Response to the Office Action submitted to the USPTO on June 5, 2009 was introduced for clarification without introducing new matter in the claims but new grounds for rejection using a new references of Yam (US Patent Application Publication # 2004/0100923) and Su (US Patent Application Publication No. 2003/0172142), not mentioned in the first Office Action of March 11, 2009, is not necessitated by the latest claim amendment. Simply put, the Examiner added the references of Yam and Su after the initial examination and therefore the applicant is opinion that the finality of the present Office Action of September 24, 2009 should be withdrawn and a new chance should be given to the applicant to respond to the present Office Action of September 24, 2009 on the merits.

Second, MPEP 706.07(a) states (see second paragraph from the top of the first column in Page 700-73): "Under present practice, second or any subsequent action on the merits shall be final, except where the Examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in the period set forth in 37 CFR

1.17(p)". The amendment submitted to the USPTO by the Applicant on June 5, 2009 in response to the first Non-final Office Action of March 11, 2009 contains a minor modification of independent claims introduced for clarifying the claim language without introducing a new matter. The new grounds for rejection introduced by the Examiner in the Final Office Action of September 24, 2009 has **nothing to do** with the amendments introduced by the Applicant on June 5, 2009. In other words, the references used by the Examiner in the Office Action March 11 2009 can be easily applied using the same arguments, which happened to be inaccurate and confusing as Examiner's arguments presented in a new rejection of September 24 2009, as shown herein. Therefore, the final rejection of September 24, 2009 is in violation of the USPTO rules quoted above. Withdrawal of finality is requested.

\*\*\*

***Claim Rejections - 35 USC § 102***

**Examiner's Position:**

Claims 1, 4, 5, 38, 39, 42, 44, 45, 48, 51 and 52 are rejected under 35 U.S.C. 102(e) as being anticipated by Yam (US publication # 2004/0100923).

**Applicant's Response:**

The applicant is of the opinion that Examiner's arguments are not accurate and confusing. The Examiner's arguments are analyzed based on MPEP guidelines which are stated in the MPEP Paragraph 2131 as follows:

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. V. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987), MPEP 2131.

Further, "the identical invention must be shown in as complete

details as is contained in the . . . claim", *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989)."

In regard to claims 1 (and other independent claims 28 and 33), first, the concept of a "stack" is defined differently in the present patent application (e.g., see Figure 2) than in the reference of Yam (e.g., see Figures 6) quoted by the Examiner.

In the present patent application published as US 2007/0127417 on June 7 2007, the "stack" is defined as a stack of modules (see Figure 2 and paragraphs 0031 and 0032 in the publication US 2007/0127417). Each such module "contains the hardware and software required to implement its designated function" (see Paragraph 0031 lines 4-5 of the publication of the present patent application US 2007/0127417).

Yam, quoted by the Examiner, does not provide such a definition of the "stack of modules". Examiner's arguments directed to assigning some equivalency with different layers/devices of Yam are inaccurate and confusing as further discussed below.

In regard to a base module recited in claim 1 of the present patent application, the Examiner stated that the physical layer 30 within a stack in figure 6 of Yam is equivalent to the base module recited in claim 1 of the present patent application. First, the function of the base module 16 shown in figure 2 of the present patent application is to provide electrical power (see last sentence of Paragraph [0032] in US 2007/0127417) to other blocks 213-215 of the "stack of modules" shown in figure 2 of the present patent application such that modules 214 and 215 will be able to communicate with other devices, whereas the physical layer 30 in Figure 6 of Yam, as known to a person skilled in the art, is for providing a real-time signal/bits for communication (for example, using transceivers), e.g., between the switching device WISE 20 and

other devices (e.g., possibly with wireless device 18, and interface device 26 and 28, see Figures 1-3 of Yam).

Thus, the equivalency, alleged by the Examiner, between the physical layer 30 of Figure 6 in Yam and the base module 216 shown in figure 2 of the present patent applications is not accurate because of their different functionalities.

Moreover, the association of the WISE device 20 of Yam with a node of a wireless local area network, as recited in claim 1 of the present patent application, is also non-substantiated by the disclosure of Yam. Indeed, switching device WISE 20 can be incorporated in the mobile device 18 (e.g., see Paragraphs [0032] and [0033] of Yam) or can be implemented externally to the mobile device 18 as stated in Paragraph [0033] of Yam and network interface devices 26 and 28 shown in figures 2, 3 and 14 of Yam are recited as separate interface devices in Yam's claims: 1, 7, 13, 19, 25, 31, 37, 43, 49, 55 and 61. Please note that in claims 37, 43, 49, 55 and 61 of Yam, the switch-device WISE 20 and mobile device 16 are combined in one apparatus.

However, there is no indication in Yam that WISE 20 can be associated with the node of a wireless local area network (WLAN), as recited in claim 1 of the present patent application. This is consistent with the function of the WISE device 20 disclosed by Yam: to provide a switching capability of the mobile device 18 to different networks (e.g., to WLAN). Thus, WISE device 20 is not an access point of the WLAN but a switch/translator providing access of the mobile device 18 to the WLAN interface device 26 or to the WAN interface device.

Furthermore, Figure 6 of Yam showing internal architecture (i.e. protocol stacks) of the WISE switching device 20 comprise "protocol stacks" related primarily to software operation (except for physical layer) in a more conventional sense as well-known to a

person skilled in the art, which is different than a stack of wireless module 214 or 215 (containing hardware and software as emphasized herein) shown in figure 2 of the present patent application.

Moreover, the Examiner stated that antenna is not shown in any figure of Yam but the WISE device 20 should have an antenna to facilitate wireless communication between mobile the device 18 (using PCT/IP protocol 24 of the mobile device 18) and the WLAN interface device 26 further interfacing with a WLAN 14 or the WAN interface device 26 further interfacing with a WAN 12, as disclosed in Paragraph [0034] of Yam. In principle, the applicant agrees with the Examiner that the device 20 of Yam should have an antenna, but the antenna layer in Figure 2 of the present patent application is different because claim 1 of the present patent application states that "one or more wireless modules positioned within said stack and coupled to the base and antenna modules". In other words, the antenna coupled to the WISE device 20 is not coupled to other device/layers in Yam, only to the WISE device itself, which is different from the subject matter recited in claim 1 of the present patent application. If the Examiner objects to the last statement, the applicant requests the Office to provide a proof on the contrary by quoting Yam.

Furthermore, the Examiner alleged that Yam disclosed in figures 2 and 3 one or more wireless modules (referring to WLAN 26 and WAN 28 devices) positioned with the stack as recited in claim 1 of the present patent application and as shown in Figure 2 of the present patent application. This statement is inaccurate and confusing.

Moreover, the Examiner stated that WISE device 20 disclosed by Yam has a stack shown in Figure 6. On the other hand the interface devices WLAN 26 and WAN 28 are also parts of said stack, according

to the Examiner. In reality, Network interface devices 26 and 28 disclosed by YAM are separate devices from WISE device 20 as shown in figured 2, 3 and 14 of Yam, disclosed in the specification and recited in claims of the Yam's patent application.

The applicant did not find any indications or even hint in the disclosure of Yam that the devices 26 and 28 are in the same stack with the WISE device 20 and share the same antenna and power supply with the WISE device 20, etc., or a part of the device WISE 20. Moreover, WISE device 20 (a switching device WISE 20 can be incorporated in the mobile device 18 as stated in Paragraphs [0032]-[0033] of Yam or can be implemented externally as stated in Paragraph [0033] of Yam) and network interface devices 26 and 28 shown, e.g., in figures 2, 3 and 14 of Yam are recited as separate interface devices in Yam's claims: e.g., see claims 1, 7, 13, 19, 25, 31, 37, 43, 49, 55 and 61 of Yam.

Furthermore, the Examiner alleged that "each of the wireless modules" in Yam is configured to perform automatic self-discovery, as recited in claim 1 of the present patent application. This is a pure speculation on the part of Examiner, because Yam did not talk or even hinted about the process of self-discovery, and the applicant requests the Office to present a proof of that statement based on the disclosure of Yam, as also required by the MPEP Paragraph 2131 quoted above.

Thus, structurally, module stacks recited in claim 1 (and other claims of the present patent application) disclosed in the specification of the present patent application (e.g., see Figure 2 and paragraphs 0031-0032 in the US 2007/0127417) are different than "protocol stacks" of the WISE device 20 disclosed by Yam (see Figure 6 of Yam), as explained herein and contrary to what is alleged by the Examiner.

Moreover, the applicant further comments on "automatic auto-discovery" as recited in claim 1 of the present patent application. Indeed, claim 1 of the present patent application describes performing automatic self-discovery as follows: "each of said wireless modules is configured to perform automatic self-discovery by automatically determining a position of said each of the wireless modules within the stack, by automatically identifying other wireless modules in the stack, and by automatically determining whether said each of said wireless modules is configured to communicate with said external wired network via a wired or wireless communication link." Detailed description of the automatic self-discovery is provided in paragraphs 0044 through 0047 and beyond of the present patent application in the US Publication US 2007/0127417.

The description of Yam does not disclose the subject matter recited in claim 1 of the present patent application as quoted above. The Examiner's assumption in that regard are artificial, unconvincing and are not supported by the disclosure of Yam. In addition to not performing "self-discovery, the WISE device 20 of Yam is configured as a switch to provide a bridge between a mobile device 18 and multiple wireless network interfaces (e.g., 26 and 28) as stated in the ABSTRACT of Yam, but not configured to communicate with the external wired network via a wired or wireless communication link, as stated in claim 1 of the present patent application, contrary to what is alleged by the Examiner.

Therefore, claim 1 and independent claims 41 and 48 of similar scope as claim 1 are not anticipated by Yam under 35 U.S.C. 102(e). All dependent claims are not anticipated by Yam under 35 U.S.C. 102(e) as being dependent on novel claims 1, 41 and 48 as argued herein. Additional arguments in regard to unique limitations of the

corresponding dependent claims can be presented if requested by the Office.

\*\*\*

***Claim Rejections - 35 USC § 103***

**Examiner's Position:**

Claims 2, 40, 42, 49 and 54 are rejected under 35 U.S.C. 103(a) as unpatentable over Yam (US publication # 2004/0100923) in view of Su (US Patent Publication No. 2003/0172142).

Claims 3, 40 and 59 are rejected under 35 U.S.C. 103(a) as unpatentable over Yam (US publication # 2004/0100923) in view of Koppol (US Publication No. 2003/0123457).

**Applicant's Response:**

The novelty and non-obviousness of all rejected claims under 35 U.S.C. 103(a) is provided by their dependence on the novel and non-obvious independent claims 1, 41 and 48, submitted herein.

More arguments can be presented by the applicant about unique limitations of the corresponding dependent claims not disclosed by references quoted by the Examiner, as well as in regard to justification (motivation) for combining references and their compatibility (i.e., their combination is teaching away from the present invention), if requested by the Office, and as required in the MPEP Paragraph 2143 and by the Case Law.

\*\*\*

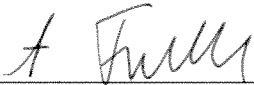


**CONCLUSION**

The objections and rejections of the Non-final Office Action of September 24 2009 having been obviated or shown to be inapplicable, withdrawal thereof is requested and passage of all claims to issue is earnestly solicited.

Respectfully submitted,  
KELLEY DRYE & WARREN LLP  
Attorneys and Agents for Applicants

Date: October 23, 2009

  
\_\_\_\_\_  
Anatoly Frenkel  
Reg. No. 54,106

400 Atlantic Street  
Stamford, CT 06901  
Direct Tel.: 203-351-8078  
Facsimile : 203-327-2669  
e-mail: [afrenkel@kelleydrye.com](mailto:afrenkel@kelleydrye.com)

**Customer No. 47670**